UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

**BOBBY ADONIS BLUITT, CHRISTOPHER BRYANT,
VARICO BUSH, DERRECO BYNUM, ALONZO CHRISTIAN,
DOMINIC RASHUN DAVIS, JAMES DEWAYNE DAVIS,
BILLY EDWARDS, CORDELL HARRIS,
RODNEY ROMEL HARRIS, CODY HOWELL,
MICHAEL L. JONES, MARK S. KENNEDY,
DEREK SCOT LIVELY, LEROY MCCOLLOUGH,
OSCAR CHRISTOPHER MCNEIL,
BOBBY ALTON MILLER, LARRY MILLER,
MICHAEL MOODY, DANNY PENROSE,
RAYMOND MATH PETREY, AARON PINSON
CARLOS RIVERS, WILLIAM ANTYWAN RUSH,
MIRANDA KAY SCOTT, JERRY SIMMONS,
JOSEPH SLAUGHTER, MICHAEL LYNN ANDREW SPRUILL,
BARRY GENE SULLIVAN, KEVIN WHITE, and
RONNIE DALE WILSON** **Plaintiffs**

v. **Civil Action No. 3:14CV208-HTW-LRA**

**MARSHALL L. FISHER (in his Official Capacity as
Commissioner of Corrections), and
STEVE PICKETT (in his Official Capacity as
Chair of the Mississippi Parole Board)** **Defendants**

FIRST AMENDED COMPLAINT

Bobby Adonis Bluitt and each of the other persons named above as Plaintiffs, pursuant to 42 U.S.C. § 1983 and Rule 15(a)(2) of the Federal Rules of Civil Procedure, and with leave of Court, assert the following as their First Amended Complaint herein, for injunctive and declaratory relief against the two State Officials named above as Defendants in their official capacities, as set forth below:

Jurisdiction and Venue

1. This action, seeking declaratory and injunctive relief against each of two Officials of the State of Mississippi, arises out of violations of the Due Process Clause of the United States Constitution, giving rise in turn to subject matter jurisdiction in this Court pursuant to 28 U.S.C. § 1331, and 42 U.S.C. § 1983.

2. The official administrative actions which have caused those violations, in failing and refusing to provide notice and an opportunity to be heard by each Plaintiff concerning their statutory right to a parole hearing, were made and implemented by the Defendants (and by persons under their active supervision) in their official capacities at and through their respective offices in Jackson, Hinds County, Mississippi, making venue in this District and Division proper within the meaning of 28 U.S.C. § 1391.

Parties

3. Plaintiff Bobby Adonis Bluitt, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 187715. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

4. Plaintiff Christopher Bryant, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 193122. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

5. Plaintiff Varico Bush, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 146118. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

6. Plaintiff Derreco Bynam, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 124520. No

conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

7. Plaintiff Alonzo Christian, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 188802. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

8. Plaintiff Dominic Rashun Davis, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is K1410. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has

never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

9. Plaintiff James Dewayn Davis, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 75765. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

10. Plaintiff Billy Edwards, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is N5437. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he

has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

11. Plaintiff Cordell Harris, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 173597. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

12. Plaintiff Rodney Romel Harris, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 188556 conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

13. Plaintiff Cody Howell, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 147106. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

14. Plaintiff Michael L. Jones, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 107323. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

15. Plaintiff Mark S. Kennedy, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 67858. No

conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

16. Plaintiff Derek Scot Lively, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 178643. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

17. Plaintiff Leroy McCollough, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 167985. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he

has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

18. Plaintiff Oscar Christopher McNeil, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 130322. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

19. Plaintiff Bobby Alton Miller, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 187871. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole

Board concerning any opportunity for an earlier restoration of his liberty through parole

20. Plaintiff Larry Miller, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is T0421. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann.* § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

21. Plaintiff Michael Moody, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 81446. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann.* § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

22. Plaintiff Danny Penrose, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi

Circuit Court of residential burglary. His MDOC Inmate Number is 92760. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

23. Plaintiff Raymond Math Petrey, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is R3407. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

24. Plaintiff Aaron Pinson, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 144695. No conviction for which he is now incarcerated renders him ineligible for parole under the

terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole

25. Plaintiff Carlos Rivers, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is L4666. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

26. Plaintiff William Antywan Rush, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 132845. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has

never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

27. Plaintiff Miranda Kay Scott, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 189598. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

28. Plaintiff Jerry Simmons, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 131112. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

29. Plaintiff Joseph Slaughter, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 189841. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

30. Plaintiff Michael Lynn Andrew Spruill, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 191648. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

31. Plaintiff Barry Gene Sullivan, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi

Circuit Court of residential burglary. His MDOC Inmate Number is 176250. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

32. Plaintiff Kevin White, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 164918. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

33. Plaintiff Ronnie Dale Wilson, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result of his conviction by a Mississippi Circuit Court of residential burglary. His MDOC Inmate Number is 183781. No conviction for which he is now incarcerated renders him ineligible for parole under the terms of any Mississippi statute, including *Mississippi Code Ann*. § 47-7-3. He has never

been provided by the MDOC or the Parole Board with any notice or information that he has any legal right or opportunity to apply or to be considered for parole, and has never been assigned or granted any hearing or any other consideration by the Mississippi Parole Board concerning any opportunity for an earlier restoration of his liberty through parole.

34. The MDOC has statutory power and responsibility to determine and enforce the terms under which each such Plaintiff Inmate is required to remain incarcerated, as well as the terms and date through or as of which each such inmate is entitled to be released from incarceration.

35. The Defendant Marshall L. Fisher, sued here in his official capacity only, is the Commissioner and Chief Executive Officer of the MDOC, with statutory responsibility for assuring that MDOC enforces and implements Mississippi statutes affecting the time periods and terms during which each such inmate is incarcerated by MDOC, including the statutory responsibility to oversee the release of each such inmate from incarceration according to such statutes, and the accurate and lawful communication to such inmates of their statutory and administrative rights (including their statutory right to a parole hearing and the timing thereof). Defendant Fisher has been "automatically substituted as a party" herein by the operation of Rule 25 (d) of the Federal Rules of Civil Procedure, by virtue of the resignation during the pendency of this action of his predecessor in office, Christopher B. Epps.

36. The Mississippi State Parole Board, under *Mississippi Code Ann*. § 47-7-3(3), is required "by rules and regulations (to) establish a method of determining a

tentative parole hearing date for each eligible offender taken into the custody" of MDOC and to determine and communicate that parole hearing date as to each such offender "within ninety (90) days after (MDOC) has assumed custody of the offender."

37. Defendant Steve Pickett, sued here in his official capacity only, is the incumbent Chairman of the Mississippi State Parole Board, and is thereby statutorily responsible for causing the Parole Board staff and members to perform the statutory duties noted above, and otherwise to provide notice of any hearing rights to, and an opportunity to be heard before such Board by, each inmate statutorily eligible for a hearing to determine whether they will have the benefit of early release, and thus a restoration of their liberty, through the granting of parole.

Statutory Background and Defendants' Conduct

38. For all purposes for which the term "residential burglary" is used in this First Amended Complaint, that term shall have the same meaning as the statutory elements of the three different "burglary" statutes now codified in Mississippi's criminal code defining the substantive elements of crimes, namely *Mississippi Code Ann*. §§ 97-17-23, 97-17-25, and 97-17-29. *Mississippi Code Ann*. § 97-17-23(1) defines the substantive crime of burglary as follows (as §97-17-23(2) provides only for an enhanced sentence under certain circumstances, but does not define any element required for a conviction): "Every person who shall be convicted of breaking and entering the dwelling house or inner door of such dwelling house of another, whether armed with a deadly weapon or not, and whether there shall be at the time some human being in such dwelling

house or not, with intent to commit some crime therein, shall be punished by commitment to the custody of the Department of Corrections for not less than three (3) years nor more than twenty-five (25) years." *Mississippi Code Ann*. § 97-17-25, in turn, defines the substantive crime of burglary as follows: "Every person who, being in the dwelling house of another, shall commit a crime, and shall break any outer door, or any other part of said house, to get out of the same, shall be guilty of burglary, and be imprisoned in the penitentiary not more than ten years." *Mississippi Code Ann*. § 97-17-29, finally, defines the substantive crime of burglary as follows: "Every person who, being lawfully in the dwelling house of another, shall break an inner door of the same house, with intent to commit a crime, shall be guilty of burglary, and imprisoned in the penitentiary not more than ten years." For all periods since at least July 1, 1996, those statutes together have provided the exclusive meanings for lawfully defining the crime of residential burglary in Mississippi.

39. Conviction of the crime of residential burglary in Mississippi does not require proof, or any finding by any jury, that any person other than the defendant was present within the subject residence at the time of the crime, or that any person apprehended a threat of violence or was the victim of violence of any kind.

40. No conviction for residential burglary in Mississippi, therefore, amounts to or demonstrates any jury finding, or any judicial adjudication, that any violent act, or even any apprehension of any violent act, has occurred or has been committed by any such convicted defendant.

41. Since 1996, there has been, and is now, no substantive crime in Mississippi law that is accurately defined or described as the crime of "burglary of an occupied dwelling," since the presence of a person within the subject dwelling is not an element of the crime of residential burglary.

42. The Plaintiffs have each been, and are being, denied by the Defendants their state statutory right to any parole hearing on the ground that, because they were convicted of residential burglary, they have been convicted of "burglary of an occupied dwelling" within the meaning of the statute defining eligibility for parole, namely *Mississippi Code Ann*. § 47-7-3(1), under Subsection "h" of which (in relevant part) other inmates convicted of "nonviolent crimes" are eligible for parole, for which purpose "nonviolent crime" (for which parole is otherwise often available) means "a felony other than homicide, robbery, manslaughter, sex crimes, arson, *burglary of an occupied dwelling*, aggravated assault, kidnapping, felonious abuse of vulnerable adults, felonies with enhanced penalties, the sale or manufacture of a controlled substance under the Uniform Controlled Substances Law, felony child abuse, or exploitation or any crime under (specified statutes concerning child abuse)." (Emphasis added).

43. The Defendants have maintained an unlawful policy and practice of treating and regarding the Plaintiffs as ineligible for any opportunity for any parole hearing because the Defendants for years regarded and treated a conviction of residential burglary as outside of the definition of "nonviolent crime," because they in turn incorrectly treat residential burglary as constituting "burglary of an occupied dwelling"

(and therefore excluded from the statutory definition of “nonviolent crime” under the language quoted above). The Defendants’ policy and practice is contrary to and in violation of, and is not authorized by, any Mississippi statute.

44. Plaintiffs Christian, Davis (Dominic), Davis (James), Edwards, Harris (Rodney), Howell, Jones, Kennedy, Lively, McCollough, Miller, Moody, Penrose, Petrey, Pinson, Rivers, Rush, Scott, Slaughter, Spruill, Sullivan, White and Wilson have each been unlawfully denied any opportunity for consideration for parole because clerical staff (under the Defendants’ supervision and control) improperly and unlawfully classified each such person as having been convicted of “burglary of an occupied dwelling,” and as therefore ineligible for parole consideration, solely because there was surplusage language contained on their respective indictments (charging such persons with residential burglary) that alleged or suggested that a person was (or may have been) occupying the residence at the times of the subject burglaries (none of which allegation, even if it had been proven, changed or affected as a matter of law the elements of the substantive crime for which each such person was later convicted).

45. Plaintiffs Bluitt, Bryant, Bush, Bynam, Harris (Cordell), McNeil, Miller (Bobby), and Simmons have each been unlawfully denied any opportunity for consideration for parole because clerical staff (under the Defendants’ supervision and control) improperly and unlawfully classified each such person as having been convicted of “burglary of an occupied dwelling,” and as therefore ineligible for parole consideration, solely because there was surplusage language contained on the sentencing

orders (by which such persons were each sentenced for the commission of a residential burglary) that inadvertently and inaccurately described the substantive statutory crime under which such sentences were ordered as involving an "occupancy" of a person in a residence, or as involving burglary of an "occupied" residence (none of which surplusage language changed or affected as a matter of law the elements of the substantive crime for which each such person was being sentenced).

46. Pursuant to and as a part of the same unlawful policy and practice, the Defendants have systematically denied the Plaintiffs their statutory right to be regarded as eligible for a parole hearing, to be given notice and an opportunity to be heard by the Parole Board, and to hear the evidence against each of them and an opportunity to present their own evidence regarding whether or not they have each earned parole (and thus the opportunity to have their liberty substantially restored).

47. As a vital part of the statutory regime by which Mississippi has elected to offer certain inmates a parole hearing and resulting opportunities for parole, *Mississippi Code Ann*. § 47-7-3(3) imposes a *mandatory requirement* on the Defendants, and in particular on the Parole Board and Defendant Pickett as its Chief Executive Officer, affirmatively to determine and fix a "tentative parole hearing date for each eligible offender" within ninety days of coming within the custody of MDOC, through the following relevant statutory language (to which the emphasis below has been added):

> The State Parole Board *shall,* by rules and regulations, establish a method of determining a tentative *parole hearing date* for each eligible offender taken into the custody of the Department of Corrections. The tentative

> parole hearing date *shall* be determined within ninety (90) days after the department has assumed custody of the offender.

48. Through adopting that statutory language, the Mississippi Legislature has decided not to make discretionary with the Defendants, but to make mandatory, the Defendants' assignment of a specific parole hearing date to each and every inmate who, by virtue of the crime(s) for which he or she is incarcerated, is statutorily-eligible for consideration for parole and thus a hearing to determine whether or not they should be paroled.

49. It is not alleged here that the federal Due Process Clause requires that any Plaintiff be ultimately granted parole by the Parole Board (after each receives notice of and participation in a full and fair hearing), or that any Mississippi parole statute by its terms violates the Due Process Clause. But when Mississippi has elected to impose on the Defendants by statute a *mandatory* duty to determine, within ninety days each inmate comes within the custody of the MDOC, which inmates are by statute eligible for a parole hearing, and a further *mandatory* duty to fix and determine within that same period a specific date for a hearing through which each such statutorily eligible inmate may hear the evidence for and against restoring their liberty through parole (and may present their own evidence as to whether they should be granted parole), Mississippi has elected to create a state statutory right so inherently and valuably related to each inmate's liberty interest that Mississippi has thereby created a liberty interest within the meaning and

protection of the federal Due Process Clause, and is obligated thereby to administer that mandatory duty through granting to each statutorily eligible inmate (including all Plaintiffs herein) a fair and adequate notice of a parole hearing date, and a fair and meaningful opportunity to prepare for and attend a parole hearing.

50. In depriving the Plaintiffs administratively of any and all notice and any opportunity to be heard and considered regarding their opportunity and eligibility for parole, the statutory right to a parole hearing established by statute in Mississippi has been rendered meaningless by the Defendants' extra-statutory conduct.

51. The Defendants' refusal and failure to discharge their mandatory State statutory duties, causing deprivation of the Plaintiffs' notice and opportunity to be heard and considered in a matter affecting their state-created opportunities to win a restoration of their liberty, violates the federal Due Process Clause.

52. In undertaking administration of the parole eligibility statutes and criteria set forth in *Mississippi Code Ann*. § 47-7-3, and in then affirmatively deciding systematically to deprive the Plaintiffs of any notice of their statutory right and opportunity to apply for and prepare for a parole hearing on or by any particular date, and indeed in affirmatively deciding systematically to deprive the Plaintiffs of any hearing with respect to their statutory right to seek parole, the Defendants have denied the Plaintiffs their fundamental interest in having notice and an opportunity to be heard regarding their fundamental liberty interests, in systematic violation both of Mississippi's parole statutes and of the Due Process Clause of the Fifth Amendment to the Constitution

of the United States.

53. Such Due Process violations shall continue, and the Plaintiffs shall be deprived of their parole hearing rights and thus their liberty interests, unless and until the Defendants are enjoined by this Court affirmatively to provide each Plaintiff with specific and actual notice, actually communicated in clear written terms directly to each and every such individual, of a “Parole Date” as of which each may have an opportunity to seek and otherwise to be considered for parole, through the assignment to them of a hearing date and a hearing through which they may each present his or her case for why their liberty should be substantially restored through the granting of parole.

54. In the absence of such a judicial injunction as to each Defendant herein, and in the absence of active and detailed court supervision of the administration of the resulting notice and hearing opportunity process, the Defendants shall continue not only to disregard the State definition of “residential burglary” in their administration of the Plaintiffs’ parole hearing rights, but shall also continue to violate the Plaintiffs’ rights under the Due Process Clause of the federal Constitution.

Relief Requested

Wherefore, the Plaintiffs by counsel each respectfully move the Court to grant all declaratory and equitable relief which it finds to be justified by the evidence to be offered at the trial hereof, including the following relief:

1. A Declaratory Judgment that each of the Plaintiffs has a federal constitutional and state statutory right to be provided by the Defendants (and those acting

in concert with or under the supervision of the Defendants) with notice of a prompt parole eligibility date, notice of a prompt parole hearing date, and an opportunity to have full consideration of their opportunity and eligibility for parole provided by the Parole Board;

2. A temporary and permanent mandatory injunction affirmatively ordering and requiring the Defendants to act, in detailed accordance with their mandatory duties under *Mississippi Code Ann*. § 47-7-3 and otherwise, promptly (a) to determine a parole hearing date for each of the Plaintiffs, (b) to communicate that date in clear and written terms directly to each such inmate (as a part of each such inmate's periodic "Inmate Time Sheet" and otherwise), (c) to confirm and demonstrate to the Court that a reasonable parole hearing date has been assigned and communicated to each such inmate, and (d) to provide each such Plaintiff with sufficient opportunity to prepare for and contribute to such a parole hearing before the Parole Board, and to present evidence in their own behalf as to why their liberty should be restored through the granting of parole; and

3. An award of reasonable attorneys' fees and litigation expenses pursuant to 42 U.S.C. § 1988.

This the 27th day of July, 2015.

BOBBY ADONIS BLUITT, ET AL.
By their Attorneys,
PIGOTT & JOHNSON, P.A.

By: s/Brad PIgott
J. Brad Pigott

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CERTIFICATE OF SERVICE

I hereby certify that I have this day, July 27, 2015, served the foregoing First Amended Complaint on the Defendants through electronic service on their Legal Counsel herein, Special Assistant Mississippi Attorney General Justin L. Matheny, at his office email address of jmath@ago.state.ms.us, and through electronic service through the Clerk of this Court through his usual electronic filing system.

s/ Brad Pigott____________________
J. Brad Pigott, Miss. Bar 4350